

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

OPENPITTSBURGH.ORG and JAKE WITMER,	}	
	}	
Plaintiffs,	}	No. 2:16-cv-01075-MRH
	}	
vs.	}	Judge Hornak
	}	
	}	
MARK WOLOSİK, in his official capacity as	}	
Manager of the Allegheny County Division of	}	
Elections; JOHN P. DEFAZIO, in his official capacity	}	
as a Member of the Allegheny County Board of	}	
Elections; RICH FITZGERALD, in his official	}	
capacity as a Member of the Allegheny County Board	}	
of Elections; SAMUEL DEMARCO, III, in his	}	
official capacity as a Member of the Allegheny	}	
County Board of Elections, and KATHLEEN KANE,	}	
in her official capacity as the Attorney General of the	}	
Commonwealth of Pennsylvania,	}	
	}	<i>Electronically Filed.</i>
Defendants.	}	

JOINT STATUS REPORT

AND NOW, come the Parties, by their respective attorneys, and respectfully submit the following status report:

1. Plaintiffs initiated this constitutional challenge to certain provisions in Pennsylvania's Home Rule and Optional Plans Law, which also implicate Pennsylvania's Election Code, by filing a Complaint on July 22, 2015 (Doc. # 1).

2. On August 1, 2016, Plaintiffs filed two respective motions for injunctive relief with supporting briefs. See (Docs. # 10-11, 17, 20); the first was entitled *Emergency Motion for Temporary Restraining Order Enjoining Defendants from Enforcing In-State Witness and Registered Voter Requirement for Referendum Petition Circulators* (Doc. #

10), and the second was entitled *Emergency Motion for Temporary Restraining Order Enjoining Defendants from Requiring Notarized Affidavit of Circulator for Referendum Petitions and that only Registered Electors may Validly Sign Plaintiff OpenPittsburgh.Org's Referendum Petitions* (Doc. #11).¹

3. Plaintiffs then filed an Amended Complaint (Doc. # 15) on August 2, 2016, which added the Secretary of the Commonwealth as a defendant, added allegations regarding the Plaintiffs' stated intent to pursue certain First Amendment activities at issue in the future, and modified the requested relief sought from the Court.

4. This action was brought pursuant to 42 U.S.C. § 1983, and was initially directed against Mark Wolosik, the Manager of the Elections Division of the Allegheny County Department of Administrative Services, and the elected officials who constitute the Allegheny County, Pennsylvania Board of Elections, Rich Fitzgerald, John DeFazio and Samuel DeMarco, III, as well as against the then Attorney General of Pennsylvania, Kathleen Kane² ("former General Kane"), and the Secretary of the Commonwealth, Pedro Cortés ("Secretary Cortés"). All defendants were sued in their official capacity only.

¹ By motion filed by Plaintiffs on August 4, 2016, which was granted by the Court on August 5, 2016, these motions for temporary restraining orders were converted to motions for preliminary injunctions. See (Doc. # 30).

² Kane resigned from office on August 17, 2016. Kane was initially succeeded by operation of law by then First Deputy Attorney General Bruce Castor; however, on August 30, 2016, Bruce R. Beemer's nomination by Governor Wolf was approved by a majority of the Senate and Beemer was subsequently sworn in as the Attorney General that same day.

5. On or about August 5, 2016, the County Defendants filed a Motion to Dismiss, asserting that because any actions on their part in the election process were merely ministerial, no claim could lie against them. See (Doc. # 34).

6. Also on August 5, 2016, a Motion to Dismiss was submitted on behalf of former General Kane and Secretary Cortés, asserting that these defendants played no role in the enforcement of the challenged statutes and had no power or authority to provide the relief requested by Plaintiffs. See (Docs. # 36-37).

7. Thereafter, on August 9, 2016, a hearing was convened before this Court to address a number of matters.

8. Initially, with respect to the Motion to Dismiss filed on behalf of former General Kane and Secretary Cortés, the Plaintiffs consented to the motion and these state officials were dismissed, albeit without prejudice. See Order of Court (Doc. # 42), at ¶ 3.

9. Thereafter, the Office of Attorney General orally moved to intervene in this matter pursuant to Fed. R.Civ. P. 5.1 and 28 U.S.C. § 2403. This motion was granted and the OAG was given intervenor status. See Order of Court (Doc. # 42), at ¶ 3.

10. The Court then proceeded to an evidentiary hearing on Plaintiffs' Motions for Preliminary Injunction, after which the motions were granted in part and denied in part. See Order of Court (Doc. # 42).

11. The Court apparently took no action on the Motion to dismiss filed by the County Defendants.

12. On August 17, 2016, the Court entered a Text Order which stated in pertinent part that "any party that has not yet responded to the operative Amended Complaint shall file any response under Rule 12 on or before September 7, 2016. A case management

conference shall be scheduled by further Order of Court.” Text Order (Doc. # 47), August 17, 2016.

13. No additional motions were filed by any party under Rule 12 on or before September 7, 2016.

14. The Office of Attorney General, as Intervenor, did not and does not anticipate filing any further motions under Rule 12.

15. The Allegheny County Defendants did not and do not anticipate filing any further motions under Rule 12.

16. It is further noted that after OpenPittsburgh.org submitted their referendum petitions to the Allegheny County Board of Elections on August 9 and 15, 2016, the petitions were accepted and the question was certified for the ballot on August 19, 2016. See (Doc. # 48).

17. Thereafter, on or about August 22, 2016, the City of Pittsburgh submitted objections in the Allegheny County Court of Common Pleas and a hearing was subsequently conducted on August 31, 2016, before the Honorable Joseph M. James.

18. Judge James issued a written opinion and order on September 20, 2016, which sustained the objections filed by the City of Pittsburgh and removed the Plaintiffs’ referendum question from the ballot for the upcoming election. See (Doc. # 51).

19. Plaintiffs have filed an appeal from Judge James’ Order in the Commonwealth Court of Pennsylvania. See (Doc. # 53). The appeal has been docketed at No. 1561 C.D. 2016.

20. In a *per curiam* order issued on September 22, 2016, the Commonwealth Court directed the respective parties to file briefs on or before September 30, 2016 in the

Court's Harrisburg Filing Office. The *per curiam* order further stated that the appeal would be promptly submitted for disposition or argument upon the filing of all briefs.

21. The Parties are in agreement that owing to the pendency of the 2016 General Election, a stay on any further proceedings should be entered in the above captioned action until after the Allegheny County Defendants have concluded their responsibilities for the conduct and certification of the 2016 General Election.

22. The Parties also discussed and agreed that the Parties would conduct only a limited amount of discovery to ensure that all applicable facts are included in the record.

23. Accordingly, the Parties request this Court to enter a temporary stay in the above captioned action until January 2, 2017.

WHEREFORE, the Parties respectfully request that the Court accept the foregoing as a status report, as requested by the Court.

Respectfully submitted,

Dated: September 30, 2016

/s/ Paul A. Rossi

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on September 30, 2016, he served, via the Court's ECF system, a true and correct copy on opposing counsel of the forgoing "Joint Status Report" filed with this Court on this date:

Dated: September 30, 2016

_____/s/ *Paul A. Rossi*_____
Paul A. Rossi, Esq.
Counsel for Plaintiffs